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NIRMALA J JHALA

v.

STATE OF GUJARAT AND ANOTHER

B SUPREME COURT, INDIA
(2013) 4 SUPREME COURT CASES 301
DR B S CHAUHAN J
F M IBRAHIM KALIFULLA J
[CIVIL APPEAL NO: 2668 OF 2005†]
C 18 MARCH 2013

COURTS: *Courts, Tribunals and Judiciary - Judiciary - Judicial independence and courage - Duty of Higher Judiciary to protect Subordinate Judicial Officers - Growing tendency of maligning reputation* D *of judicial officers by disgruntled litigants who fail to secure order in their favour, strongly deprecated - Besides "Judge bashing", various other problems faced by subordinate judiciary at hands of unscrupulous litigants and lawyers, highlighted - For proper functioning of democracy, independent judiciary to dispense justice without fear and favour,* E *is paramount - Duty of High Court to protect honest Subordinate Judicial Officers, emphasised - Constitution of India, Arts. 227 and 235 (Paras 18 to 21)*

Held:

F A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure-contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the G institution. "Judge bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and H favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Para 20)

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20 Set out in paras 1 to 43, above.

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† From the Judgment and Order dated 25-8-2004 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 5759 of 1999

The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them "Judge bashing" becomes a favourable pastime. In case the High Court does not protect honest judicial officers, the survival of the judicial system would itself be in danger. (Para 21)

Ishwar Chand Jain v. High Court of P&H, (1988) 3 SCC 370 : 1988 SCC (L&S) 797
Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739 : 1999 SCC (L&S) 1385
L.D. Jaikwal v. State of U.P., (1984) 3 SCC 405 : 1984 SCC (Cri) 421
K.P. Tiwari v. State of M.P., 1994 Supp (1) SCC 540 : 1994 SCC (Cri) 712
Haridas Das v. Usha Rani Banik, (2007) 14 SCC 1 : (2009) 1 SCC (Cri) 750
Ajay Kumar Pandey, In re, (1998) 7 SCC 248, followed

ADMINISTRATIVE LAW: *Service Law - Departmental Enquiry - Enquiry procedure - Natural Justice - Preliminary enquiry - Reliance on - Extent to which permissible - Held, evidence recorded in preliminary enquiry cannot be used in regular enquiry as delinquent is not associated with it, and opportunity to cross-examine persons examined in preliminary enquiry is not given - Thus, using such evidence violates principles of natural justice since cross-examination is an integral part of natural justice - Preliminary enquiry may be useful only to take prima facie view, as to whether there is some substance in allegations made against employee which may warrant further enquiry - Besides, preliminary enquiry and its report loses significance/importance once regular enquiry is initiated by issuing chargesheet to delinquent - On facts held, in absence of anything to show that either preliminary enquiry report or statements recorded therein had been exhibited in regular inquiry, such report/statements could not be relied on against appellant - Enquiry officer as well as High Court on its administrative and judicial side erred in relying upon it for fastening guilt upon appellant and compulsorily retiring appellant - Punishment of compulsory retirement, set aside (Paras 41 to 52 and 14)*

Champaklal Chimanlal Shah v. Union of India, AIR 1964 SC 1854
Narayan Dattatraya Ramteerthakhar v. State of Maharashtra, (1997) 1 SCC 299 : 1997 SCC (L&S) 152
Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, (2013) 4 SCC 465

A *Amalendu Ghosh v. North Eastern Railway, AIR 1960 SC 992, followed*

Govt. of India v. Tarak Nath Ghosh, (1971) 1 SCC 734, relied on, on this point [overruled on other points in P.R. Nayak v. Union of India, (1972) 1 SCC 332 and *T.V. Nataraj v. State of Karnataka, (1994) 2 SCC 32]*

B *S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379*

D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259 : 1993 SCC (L&S) 723

Mohd. Yunus Khan v. State of U.P., (2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180, relied on

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ADMINISTRATIVE LAW: *Service Law - Departmental Enquiry - Preliminary enquiry - Prima facie case - What amounts to - Held, prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the* D *case were to be believed - While determining whether a prima facie case has been made out relevant consideration is whether on evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence - Words and Phrases - "Prima facie case" (Para 48)*

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Martin Burn Ltd. v. R.N. Banerjee, AIR 1958 SC 79

Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa, AIR 1960 SC 1352

V.C. Shukla v. State (Delhi Admn.), 1980 Supp SCC 249 : 1980 SCC (Cri) 849

F *Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719*

Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395, relied on

ADMINISTRATIVE LAW: *Service Law - Departmental Enquiry -* G *Nature and Standard of proof - Quasi-judicial and quasi-criminal proceedings - Principle of preponderance of probabilities is applicable, and not doctrine of proof beyond reasonable doubt - Finding of court that delinquent has committed misconduct should be based on evidence - Such conclusion must be reached on basis of what a prudent man would have* H *done - In instant case, complainant (alleging misconduct in performance of judicial duties by appellant) was disbelieved by enquiry officer as well as High Court on various issues, particularly on point of complainant personally having heard conversation when alleged demand of Rs 20,000 was made by appellant judicial officer to complainant's counsel for passing* I *order in complainant's favour - Further, allegation that appellant had threatened complainant to withdraw complaint was also found false - Allegation that appellant's husband was collecting bribe amounts on her* *behalf was also baseless since at that point of time, she was unmarried - Furthermore, there was nothing on record to show that appellant, whose defence was disbelieved in toto, had ever been given any adverse entry in her ACRs, or punished earlier in any enquiry - Hence, order of punishment imposed by High Court in compulsorily retiring appellant, set aside - However, as appellant had already reached age of superannuation, besides being exonerated honourably, granted costs quantified at Rs 5 lakhs - Constitution of India - Arts. 136 and 21 - Costs as compensation - When warranted (Paras 11 to 17, 38, 52 and 53)*

M.V. Bijlani v. Union of India, (2006) 5 SCC 88 : 2006 SCC (L&S) 919
Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713 : 2006 SCC (L&S) 840
Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398
Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609
M.S. Bindra v. Union of India, (1998) 7 SCC 310 : 1998 SCC (L&S) 1812
High Court of Judicature of Bombay v. Udaysingh, (1997) 5 SCC 129 : 1997 SCC (L&S) 1132
Noor Aga v. State of Punjab, (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748
Union of India v. Naman Singh Shekhawat, (2008) 4 SCC 1 : (2008) 1 SCC (L&S) 1053
Vijay Singh v. State of U.P., (2012) 5 SCC 242
Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819, relied on
Nirmala J. Jhala v. State of Gujarat, (2004) 3 Guj LR 2142, reversed
Prahlad Saran Gupta v. Bar Council of India, (1997) 3 SCC 585, distinguished
Harish Chandra Tiwari v. Baiju, (2002) 2 SCC 67 : 2002 SCC (Cri) 294, considered

COURTS: *Courts, Tribunals and Judiciary - Judicial Review - Scope - Reiterated - Judicial review is not akin to adjudication on merits by reappreciating evidence as an appellate authority - Adequacy or reliability of evidence cannot be permitted to be canvassed before court in writ proceedings - Only consideration court/tribunal has in judicial review is to consider whether conclusions of appellate authority are based on evidence on record and supports findings - Judicial review jurisdiction is circumscribed and confined to correct errors of law or procedural error, if*

A *any, resulting in manifest miscarriage of justice or violation of principles of natural justice - Besides, even when some defect is found in decision making process, court must exercise its discretionary power with great caution keeping in mind larger public interest and only when it comes to conclusion that overwhelming public interest requires interference, should* B *court intervene - Constitution of India - Arts. 226, 32 and 136 - Administrative Law - Judicial Review - Limits of Judicial Review (Paras 22 to 24)*

State of T.N. v. S. Subramaniam, (1996) 7 SCC 509 : 1996 SCC C *(L&S) 627 : (1996) 33 ATC 317*
R.S. Saini v. State of Punjab, (1999) 8 SCC 90 : 1999 SCC (L&S) 1424
Govt. of A.P. v. Mohd. Nasrullah Khan, (2006) 2 SCC 373 : 2006 SCC (L&S) 316
D *Zora Singh v. J.M. Tandon, (1971) 3 SCC 834, relied on*

ADMINISTRATIVE LAW: *Service Law - Departmental Enquiry - Enquiry procedure - Burden and Onus of proof - High Court wrongly placing onus on appellant delinquent to explain alleged incident of demand of illegal gratification, and holding that by simply disowning and denying* E *such occurrence she had not discharged it - Held, burden of proof lay on Department and High Court erred in shifting onus upon appellant who was delinquent in enquiry - Evidence Act, 1872, ss. 101 and 102 (Paras 39 and 52)*

F ***ADMINISTRATIVE LAW:*** *Service Law - Penalty/Punishment - Proportionality - Offence of corruption - Punishment of dismissal, reiterated, is appropriate (Paras 25 and 26)*

Municipal Committee, Bahadurgarh v. Krishnan Behari, (1996) 2 SCC G *714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238*
NEKRTC v. H. Amaresh, (2006) 6 SCC 187 : 2006 SCC (L&S) 1290
U.P. SRTC v. Vinod Kumar, (2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1
H *U.P. SRTC v. Suresh Chand Sharma, (2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239, relied on*

Appeal allowed P-D/51548/CL

Advocates who appeared in this case:
I *For the appellant - Ms Mahalakshmi Pavani, G. Balaji Mukesh Kr. Singh and M/s Mahalakshmi Balaji & Co, Advocates,*
For the respondents - Ms K. Enatoli Sema, Amit Kr. Singh and Ms Hemantika Wahi, Advocates,

Chronological list of cases cited:

Ayaaubkhan Noorkhan Pathan v. State of Maharashtra (2013) 4 SCC 465
Vijay Singh v. State of U.P. (2012) 5 SCC 242
Krushnakant B. Parmar v. Union of India (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609
Mohd. Yunus Khan v. State of U.P. (2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180
U.P. SRTC v. Suresh Chand Sharma (2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239
Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398
Noor Aga v. State of Punjab (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748
Union of India v. Naman Singh Shekhawat (2008) 4 SCC 1 : (2008) 1 SCC (L&S) 1053
Moni Shankar v. Union of India (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819
U.P. SRTC v. Vinod Kumar (2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1
Haridas Das v. Usha Rani Banik (2007) 14 SCC 1 : (2009) 1 SCC (Cri) 750
NEKRTC v. H. Amaresh (2006) 6 SCC 187 : 2006 SCC (L&S) 1290
M.V. Bijlani v. Union of India (2006) 5 SCC 88 : 2006 SCC (L&S) 919
Narinder Mohan Arya v. United India Insurance Co. Ltd. (2006) 4 SCC 713 : 2006 SCC (L&S) 840
Govt. of A.P. v. Mohd. Nasrullah Khan (2006) 2 SCC 373 : 2006 SCC (L&S) 316
Cholan Roadways Ltd. v. G. Thirugnanasambandam (2005) 3 SCC 241 : 2005 SCC (L&S) 395
Nirmala J. Jhala v. State of Gujarat (reversed) (2004) 3 Guj LR 2142
Harish Chandra Tiwari v. Baiju (2002) 2 SCC 67 : 2002 SCC (Cri) 294
R.S. Saini v. State of Punjab (1999) 8 SCC 90 : 1999 SCC (L&S) 1424
Yoginath D. Bagde v. State of Maharashtra (1999) 7 SCC 739 : 1999 SCC (L&S) 1385
M.S. Bindra v. Union of India (1998) 7 SCC 310 : 1998 SCC (L&S) 1812
Ajay Kumar Pandey, In re (1998) 7 SCC 248
High Court of Judicature of Bombay v. Udaysingh (1997) 5 SCC 129 : 1997 SCC (L&S) 1132
Prahlad Saran Gupta v. Bar Council of India (1997) 3 SCC 585
Narayan Dattatraya Ramteerthakhar v. State of Maharashtra (1997) 1 SCC 299 : 1997 SCC (L&S) 152
State of T.N. v. S. Subramaniam (1996) 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317
Municipal Committee, Bahadurgarh v. Krishnan Behari (1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238
K.P. Tiwari v. State of M.P. 1994 Supp (1) SCC 540 : 1994 SCC (Cri) 712
D.K. Yadav v. J.M.A. Industries Ltd. (1993) 3 SCC 259 : 1993 SCC (L&S) 723

A *Dalpat Kumar v. Prahlad Singh (1992) 1 SCC 719*

Ishwar Chand Jain v. High Court of P&H (1988) 3 SCC 370 : 1988 SCC (L&S) 797

L.D. Jaikwal v. State of U.P. (1984) 3 SCC 405 : 1984 SCC (Cri) 421

S.L. Kapoor v. Jagmohan (1980) 4 SCC 379

B *V.C. Shukla v. State (Delhi Admn.) 1980 Supp SCC 249 : 1980 SCC (Cri) 849*

Zora Singh v. J.M. Tandon (1971) 3 SCC 834

Govt. of India v. Tarak Nath Ghosh (1971) 1 SCC 734

Champaklal Chimanlal Shah v. Union of India AIR 1964 SC 1854

C *Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa AIR 1960 SC 1352*

Amalendu Ghosh v. North Eastern Railway AIR 1960 SC 992

Martin Burn Ltd. v. R.N. Banerjee AIR 1958 SC 79

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JUDGMENT

Dr B S Chauhan J:

E **[1]** This appeal has been preferred against the impugned judgment and order dated 25-8-2004, passed in *Nirmala J. Jhala v. State of Gujarat*[1], by way of which the challenge to punishment order of compulsory retirement of the appellant has been turned down.

F **[2]** Facts and circumstances giving rise to this appeal are: that the appellant had joined the Gujarat State Judicial Service in 1978, and was promoted subsequently as Civil Judge (Senior Division) in 1992. She was posted as Chief Judicial Magistrate (Rural) in Ahmedabad. In December 1991, she was trying one Gautam Ghanshyam Jani in CBI Case No. 5 of 1991 for the G offence of misappropriation and embezzlement of public money. The accused filed a complaint with CBI on 19-8-1993, against the appellant alleging that she had demanded a sum of Rs 20,000 on 17-8-1993 as illegal gratification, to pass order in his favour, through one C.B. Gajjar, Advocate. As it was not possible for the H complainant to pay the said amount, the appellant had agreed to accept the same in instalments, and in order to facilitate the said complainant's efforts to arrange the said amount in part, she had even granted adjournment.

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[1] (2004) 3 Guj LR 2142

[3] The said complaint filed with CBI was referred to the High Court and in pursuance thereof, a preliminary enquiry was conducted against the appellant in which statements of various persons including C.B. Gajjar and G.G. Jani were recorded. The court then suspended the appellant *vide* order dated 21-1-1994, and directed a regular enquiry appointing Shri M.C. Patel, Additional Civil Judge, City Civil Court, Ahmedabad as the enquiry officer.

[4] A charge-sheet dated 6-8-1994, containing 12 charges was served upon the appellant. One of the main charges was, the demand of illegal gratification to the tune of Rs 20,000 from G.G. Jani through C.B. Gajjar, Advocate *in lieu* of favouring the complainant-accused. Another relevant charge was that a person known as "Mama" amongst the litigants, would come to her residence, accompany her to court, and collect money from litigants on her behalf and thus, she had indulged in corrupt practices.

[5] During the course of the enquiry, G.G. Jani, C.B. Gajjar, P.K. Pancholi and certain other witnesses were examined by the department and in her defence, the appellant examined herself denying all the allegations made against her. The enquiry officer submitted his report on 24-10-1997, holding the appellant guilty of the first charge and partially guilty of the second charge i.e., to the extent that one person named "Mama" used to visit her quite frequently. However, it could not be proved that he had ever misused his association with the appellant in any respect. All other charges were found unsubstantiated.

[6] In pursuance of the report submitted by the enquiry officer, the matter was examined on the administrative side by the High Court, and after meeting various legal requirements i.e., issuing show-cause notice to the appellant and considering her reply, the Court *vide* resolution dated 12-10-1998, made a recommendation to the State that the appellant was guilty of the first charge, and thus, punishment of compulsory retirement be imposed on her. The Government accepted the same and issued a notification giving compulsory retirement to the appellant on 11-12-1998.

[7] Aggrieved, the appellant challenged the said order of punishment, by filing a Special Civil Application No. 5759 of 1999 before the High Court on the ground that the findings of the enquiry officer were perverse and based on no evidence. However, A the said civil application was dismissed by the High Court, *vide* impugned judgment and order dated 25-8-2004[1]. Hence, this appeal.

[8] Ms Mahalakshmi Pavani, learned counsel appearing for the B appellant, has submitted that one Gautam Ghanshyam Bhai Jani, an officer of Oriental Insurance Co. at Mehasana had been involved in a CBI case for the offence punishable under ss. 406, 467 and 471 of the Penal Code 1860. After investigation, a charge-sheet had been filed against him in the Court of the Chief C Judicial Magistrate, Mirzapur in Case No. 5 of 1991. Shri Bhatt, the then CJM had liberally granted long adjournments to the accused-complainant. The case had started in 1991, but no progress was made till 1993, as the accused-complainant had only been seeking adjournments. The appellant had joined in the said D Court as CJM in 1993, and wanted to conclude the trial, thus, she granted short adjournments. The accused-complainant was being represented by Shri Pankaj Pancholi, Advocate. He had been granted adjournments one or two times, but later on, the appellant refused to accommodate him. She hence, began E examining witnesses even in the absence of the complainant's advocate. The complainant was directed/instructed to keep his advocate present, and in the event that Shri Pankaj Pancholi was not available, to make alternative arrangement. Shri Pankaj Pancholi introduced the accused-complainant to Shri C.B. Gajjar, F Advocate practicing therein. Shri Pankaj Pancholi told Shri Gajjar that as the accused-complainant was his relative, he was not in a position to ask the accused to pay fees. Thus, Shri Gajjar should ask the accused-complainant to pay a sum of Rs 20,000 to be paid to the appellant, in order to get a favourable order. The G appellant did not meet Shri Gajjar in her chamber, nor did she put up any demand. The complaint, however, was motivated as the appellant was a very strict officer. This theory of demand/bribe and further, the readiness to accept the same in instalments, was a cooked up story. The findings of fact recorded by the enquiry H officer are perverse, as Shri Gajjar, Advocate has denied meeting the appellant in her chamber. The High Court did not appreciate the evidence in correct perspective and failed to protect an honest judicial officer, which was its obligation. The punishment imposed is too severe and disproportionate to the delinquency. Therefore, I the appeal deserves to be allowed.

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[1] *Nirmala J. Jhala v. State of Gujarat*, (2004) 3 Guj LR 2142

[9] Per contra, Ms Enatoli K. Sema, learned counsel for the respondents has opposed the appeal contending that the case of demand of bribe, and an agreement to accept the same in instalments, stands fully proved. Rule 6 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, provides for major penalties in the event that a charge is proved against the delinquent, which include reduction to a lower stage in the timescale of pay for a specified period; reduction to a lower timescale of pay; compulsory retirement; removal from service and dismissal from service. The High Court was lenient and only imposed a punishment of compulsory retirement, otherwise it was a fit case where the appellant ought to have been dismissed from service. There is ample evidence on record to establish the charge of corruption against her, which has been properly appreciated by the enquiry officer, as well as by the High Court. Standard of proof required in a case of departmental enquiry is not that of "beyond reasonable doubt", as required in a criminal trial. Moreover, the scope of judicial review is limited in such a case. Thus, no interference is called for.

[10] We have considered the rival submissions made by the learned counsel for the parties and perused the record. It may be pertinent to deal with the legal issues involved herein, before dealing with the case on merits.

Legal Issues

I. Standard Of Proof In A Departmental Enquiry Which Is Quasi-Criminal/Quasi-Judicial In Nature

[11] In *M.V. Bijlani v. Union of India*[2] this Court held: (SCC p. 95, para. 25)

> 25. ... Disciplinary proceedings, however, being **quasi-criminal in nature**, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e., **beyond all reasonable doubts**, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a **preponderance of probability** to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration

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[2] (2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475

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> any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. (emphasis added)

B (See also *Narinder Mohan Arya v. United India Insurance Co. Ltd.*[3], *Roop Singh Negi v. Punjab National Bank*[4] and *Krushnakant B. Parmar v. Union of India*[5])

[12] In *Prahlad Saran Gupta v. Bar Council of India*[6] this Court observed that when the matter relates to a charge of professional C misconduct which is quasi-criminal in nature, it requires proof beyond reasonable doubt. In that case the finding against the delinquent advocate was that he retained a sum of Rs 15,000 without sufficient justification from 4-4-1978 till 2-5-1978 and he deposited the amount in the Court on the latter date, without D disbursing the same to his client. The said conduct was found by this Court as "not in consonance with the standards of professional ethics expected from a senior member of the profession" (SCC p. 593, para. 11). On the said fact situation, this Court imposed a punishment of reprimanding the advocate E concerned.

[13] In *Harish Chandra Tiwari v. Baiju*[7] (SCC p. 72, para. 17) this Court made a distinction from the above judgment stating the facts in the aforesaid decisions would speak for themselves and the F distinction from the facts of this case was so glaring that the misconduct of the appellant in the present case was of a far graver dimension. Hence, the said decision was not of any help to the appellant for mitigation of the quantum of punishment.

G **[14]** In *Noor Aga v. State of Punjab*[8], it was held that: (SCC p. 460, para. 88)

> 88. ... '17. The departmental proceeding being a quasi-judicial one the principles of natural justice are required to be complied with. The courts exercising power of judicial review

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[3] (2006) 4 SCC 713 : 2006 SCC (L&S) 840 : AIR 2006 SC 1748

[4] (2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398 : AIR 2008 SC Supp 921

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[5] (2012) 3 SCC 178 : (2012) 1 SCC (L&S) 609

[6] (1997) 3 SCC 585 : AIR 1997 SC 1338

[7] (2002) 2 SCC 67 : 2002 SCC (Cri) 294 : AIR 2002 SC 548

[8] (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748 : AIR 2009 SC Supp 852

> are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles.'*

(See also *Roop Singh Negi v. Punjab National Bank*[4], *Union of India v. Naman Singh Shekhawat*[9] and *Vijay Singh v. State of U.P.*[10])

[15] In *M.S. Bindra v. Union of India*[11] it was held: (SCC p. 317, para. 13)

> 13. ... While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim *nemo firut repente turpissimus* (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of administrative law. The authorities should not keep their eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of 'doubtful integrity', it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label 'doubtful integrity'.

[16] In *High Court of Judicature of Bombay v. Udaysingh*[12] this Court held: (SCC p. 137, para. 10)

> 10. ... The doctrine of 'proof beyond doubt' has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct.

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* Ed.: As observed in *Moni Shankar v. Union of India*, (2008) 3 SCC 484 at p. 492, para 17 : (2008) 1 SCC (L&S) 819

[4] (2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398

[9] (2008) 4 SCC 1 : (2008) 1 SCC (L&S) 1053

[10] (2012) 5 SCC 242 : AIR 2012 SC 2840

[11] (1998) 7 SCC 310 : 1998 SCC (L&S) 1812 : AIR 1998 SC 3058

[12] (1997) 5 SCC 129 : 1997 SCC (L&S) 1132 : AIR 1997 SC 2286

A **[17]** In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of B preponderance of probabilities would apply. The Court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The *ratio* of the judgment in C *Prahlad Saran Gupta*[6] does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee.

II. Duty Of Higher Judiciary To Protect Subordinate Judicial Officers

D **[18]** In *Ishwar Chand Jain v. High Court of P&H*[13] it was held: (SCC pp. 381-82, para. 14)

> 14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under E a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders ... no judicial officer would feel protected and it would be difficult F for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a *sine qua non* for the rule of law. ... It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.

G **[19]** In *Yoginath D. Bagde v. State of Maharashtra*[14] it was held: (SCC p. 766, para. 48)

> 48. ... The Presiding Officers of the court cannot act as fugitives. They have also to face sometimes quarrelsome, H unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs.

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[6] *Prahlad Saran Gupta v. Bar Council of India*, (1997) 3 SCC 585

[13] (1988) 3 SCC 370 : 1988 SCC (L&S) 797 : AIR 1988 SC 1395

[14] (1999) 7 SCC 739 : 1999 SCC (L&S) 1385 : AIR 1999 SC 3734

[20] A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure-contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. "Judge bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (*Vide L.D. Jaikwal v. State of U.P.*[15], *K.P. Tiwari v. State of M.P.*[16], *Haridas Das v. Usha Rani Banik*[17] and *Ajay Kumar Pandey, In re*[18])

[21] The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them "Judge bashing" becomes a favourable pastime. In case the High Court does not protect honest judicial officers, the survival of the judicial system would itself be in danger.

III. Scope Of Judicial Review

[22] It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings. (*Vide State of T.N. v. S. Subramaniam*[19], *R.S. Saini v. State of Punjab*[20] and *Govt. of A.P. v. Mohd. Nasrullah Khan*[21])

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15. (1984) 3 SCC 405 : 1984 SCC (Cri) 421 : AIR 1984 SC 1374
16. 1994 Supp (1) SCC 540 : 1994 SCC (Cri) 712 : AIR 1994 SC 1031
17. (2007) 14 SCC 1 : (2009) 1 SCC (Cri) 750 : AIR 2007 SC 2688
18. (1998) 7 SCC 248 : AIR 1998 SC 3299
19. (1996) 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317 : AIR 1996 SC 1232
20. (1999) 8 SCC 90 : 1999 SCC (L&S) 1424
21. (2006) 2 SCC 373 : 2006 SCC (L&S) 316 : AIR 2006 SC 1214

[23] In *Zora Singh v. J.M. Tandon*[22] this Court while dealing with the issue of scope of judicial review, held as under: (SCC p. 838, para. 10)

> 10. ... The principle that if some of the reasons relied on by a tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction *if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction.* But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the tribunal, even if some of it was irrelevant, a superior court would not interfere *if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the superior court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.* (emphasis added)

[24] The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The court does not sit as a court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from *mala fides*, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of reappreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the court should intervene.

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[22] (1971) 3 SCC 834 : AIR 1971 SC 1537

IV. Punishment In Corruption Cases

[25] In *Municipal Committee, Bahadurgarh v. Krishnan Behari*[23] this Court held as under: (SCC p. 715, para. 4)

> 4. ... In a case of such nature-indeed, in cases involving corruption-there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.

[26] In *NEKRTC v. H. Amaresh*[24] this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal. Similar view has been reiterated in *U.P. SRTC v. Vinod Kumar*[25] and *U.P. SRTC v. Suresh Chand Sharma*[26].

[27] The case at hand is required to be considered in light of the aforesaid settled legal propositions. In the instant case, after the preliminary enquiry, when the regular enquiry was conducted, three star witnesses were examined by the Department.

[28] Shri G.G. Jani, complainant-accused in his examination-in-chief has deposed that he had been an employee of Oriental Insurance Co. at Mehasana, and at the relevant time, was facing a criminal case for misappropriation of money, and for producing up false documents. His case was initially tried by Shri Bhatt, the then Chief Judicial Magistrate in 1991 and he happened to give him long adjournments. Later when the appellant was hearing the

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[23] (1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238 : AIR 1996 SC 1249

[24] (2006) 6 SCC 187 : 2006 SCC (L&S) 1290 : AIR 2006 SC 2730

[25] (2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1

[26] (2010) 6 SCC 555 : (2010) 2 SCC (L&S) 239

A case, only short adjournments were granted. Pankaj Pancholi, who was practising as an advocate in the High Court, was engaged by him. Initially he had got the case adjourned twice, but he could not attend on the subsequent dates. As a result the appellant started examining the witnesses even in his advocate's absence. B The appellant had instructed the complainant-accused to keep his advocate present, or to make an alternative arrangement. The case was fixed for 13-8-1993, and on that date, on the instructions of Shri Pancholi, Shri C.B. Gajjar, Advocate came to the court. He got the complainant-accused to sign his C vakalatnama. Shri C.B. Gajjar had told him not to worry as he was having very good relations with the appellant, and he would be able to get adjournments. He sought adjournment and the appellant fixed the case for 20-8-1993. Shri C.B. Gajjar called the complainant on 17-8-1993 near the chamber of the appellant in D court compound at about 4 to 4.30p.m. On reaching there he had met Shri C.B. Gajjar, who had told him that he would talk to madam to decide the case in his favour and went to her chamber at about 5p.m. The complainant remained standing outside in the lobby. The appellant was in her chamber. Shri C.B. Gajjar had E then came out, after 15 minutes and told the complainant that the appellant had demanded Rs 20,000 to deliver the judgment in his favour. The complainant told him that it was a very high amount and requested Shri C.B. Gajjar to negotiate for a reasonable amount. Thereafter, Shri C.B. Gajjar again went to her chamber. F At that time, the complainant was standing outside the door of the chamber. Shri Gajjar discussed his case with the appellant in a slow voice. Shri C.B. Gajjar came out and told the complainant that the amount was reasonable and he had to pay the same on 19-8-1993. The witness requested Shri Gajjar to fix the payment G in instalments. Thus, it was agreed to make payment of the first instalment of Rs 5000 on 20-8-1993. However, the arrangement of money could not be made. The accused-complainant went to the office of CBI on 19-8-1993 and filed a complaint.

H **[29]** After receiving the complaint from the complainant, CBI tried to collect some evidence in the matter, and Shri C.B. Gajjar was invited to Yamuna Hotel, where the panchas and CBI people went along with the complainant. Shri C.B. Gajjar came there, however, he got some doubt, therefore, he asked the complainant

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about the identification of the persons present there and left the place immediately. The complainant also deposed about some threat given to his wife at the behest of the appellant to withdraw the complaint.

[30] In his cross-examination, the complainant admitted that there was a room adjacent to the chamber of the appellant for the use of the stenographer, and also admitted that he did not hear the conversation made between the appellant and Shri C.B. Gajjar, Advocate. What he has deposed was based on as to what Shri Gajjar had told him. He replied to suggestion made to him as under:

> Question: I say that in the case of CBI against you, as your advocate being your close relative, he was not able to take the fee from you and for that reason, Advocate Shri Gajjar was also not able to take fee from you. Therefore, with a view to obtain his fee from you, whether Shri Gajjar had demanded the same using the name of the Magistrate?
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> Answer: I do not want to say anything in this regard.

[31] Shri C.B. Gajjar, Advocate, deposed that Shri P.K. Pancholi, Advocate had told him that the complainant-accused was brother of his brother-in-law, so he could not ask him to pay any fee. Thus, it was agreed that he should ask the complainant-accused to pay Rs 20,000, as the amount was to be given to the appellant as a bribe to get a favourable order. Thus, in view thereof, he had told the complainant-accused that he had to pay Rs 20,000 to the appellant to get a favourable order. In his cross-examination, he deposed as under:

> I went to Miss Jhala's court on 13-8-1993 in morning in Gautambhai Jani's case and after that **never went there**. I did not go into the chamber of Miss Jhala on 17-8-1993. No talk has taken place with her for money at any time. ... Miss Jhala has not made any such demand. (emphasis supplied)

Shri C.B. Gajjar further admitted that the appellant was unmarried. Further, he admitted that he was called by the Vigilance Officer and he made the statement before him. He admitted his signature on the said statement and stated that it was correct.

A **[32]** Shri Pankaj K. Pancholi, Advocate, did not support the case of the department, and his evidence is of no use for determination of the issue as to whether the appellant had demanded a bribe for deciding the case in favour of the complainant-accused.

B **[33]** The appellant examined herself in defence and deposed that her court was of the size of 50 ft × 30 ft and chamber admeasured 22 ft × 14 ft, and adjacent thereto, there was a chamber for stenographer measuring 10 ft × 10 ft. A person from outside could enter her chamber only through the said C stenographer's room. Therefore, nobody outside the room could hear any conversation which could be had in the Magistrate chamber. Shri C.B. Gajjar, had appeared in her court in the case of the complainant-accused on 13-8-1993 only and sought adjournment. As the witness brought by CBI was present, she had D given a short adjournment, and fixed the matter for 20-8-1993. She had not discussed anything with Shri Gajjar, Advocate in her chamber for CBI Case No. 5/1991, or any other case. There could be no talk about the demand of money for this case or any other case. Shri C.B. Gajjar had come only into the court. She E had not seen Shri Gajjar on any other day, or on 17-8-1993. She had never met him other than on that date in court either in chamber or any other place. She was unmarried. She was not granting long adjournments in any case, and instead asking the parties to keep their witnesses ready.

F **[34]** There was another witness examined by the Department, namely, Jethagir, Inspector working in the Income Tax Department in the Vigilance. He deposed that he had gone out at the request of the Department and met the complainant-accused. He was G introduced to the complainant, and was taken to the court of the appellant on 20-8-1993, but the appellant did not come to the court.

[35] On the basis of the aforesaid evidence, the enquiry officer prepared a report, Ext. 121. So far as Charge 1 is concerned, he H appreciated the evidence as under:

> Now I turn to **Shri Jani's statement before the Vigilance Officer** which was recorded on 20-9-1993. In that statement he repeated the allegations made in his complaint dated 19-8-1993 to CBI. He added that when Shri Gajjar went again into the I chamber of Miss Jhala on 17-8-1993 to make a request for instalment, he stood in front of the door near the chamber so as

A to be able to get an idea of the talk in the chamber. *According to him, when Shri Gajjar talked about instalment Miss Jhala initially refused but when Shri Gajjar made a request, she agreed to give instalment of Rs 5000.* Shri Jani then gave the following account of what happened in Yamuna Restaurant on 28-8-1993.

B However, the gravest and clinching circumstance against Miss Jhala is the fact that Shri Gajjar called Shri Jani to meet him outside her chamber at 4.45 p.m. on 17-8-1993 and demanded Rs 20,000 after a meeting with her in her chamber no doubt both Miss Jhala and Shri Gajjar had denied this allegation. However, C the tenor of **Shri Gajjar's statement before the Vigilance Officer** shows that the meeting in Yamuna Hotel on 20-8-1993 was in pursuance of the previous talk between Shri Jani and Shri Gajjar. On 13-8-1993, Shri Gajjar had left the court after getting the case adjourned and there was no talk about any payment at that time. The meeting, therefore, took place after 13-8-1993 and D before 19-8-1993 when Shri Jani sent to CBI Officer and made the complaint. In the circumstances, **there is no reason to disbelieve Shri Jani's account** of what happened on 17-8-1993 given in his complaint dated 19-8-1993.

E In the circumstances, the assertion of Miss Jhala and Shri Gajjar that there was no meeting between them cannot be accepted as true ... It may be that **Shri Jani's claim to have been standing near the chamber so as to be able to hear the talk is a subsequent improvement but the** fact that there was a meeting between Miss Jhala and *Shri Gajjar cannot be doubted and in the* F *absence of any explanation of the reason for the meeting, the only inference that can be drawn is that Miss Jhala demanded illegal gratification and Shri Gajjar conveyed the demand to Shri Jani.* This inference is strengthened by the fact that on his own say Shri Gajjar gave an assurance to Shri Jani and Shri Gajjar in the Yamuna Hotel that the work would be done and there would be G no cheating. Both Shri Jani and Shri Gajjar said in their statements before the **Vigilance Officer** that Shri Gajjar could accompany him to the residence of Miss Jhala though she would not accept payment in person. According to Shri Jani, Shri Gajjar said that the **dealing is made by her husband**. It is said that H **Miss Jhala is unmarried** and hence there was no question of her husband being present. But **it is possible that the payment was to be accepted by some other person** when Shri Gajjar loosely described as Miss Jhala's husband. ... It **may be** that Shri Gajjar was to retain part of the amount but there is no doubt that Miss Jhala agreed to accept illegal gratification for doing a favour to I Shri Jani and Shri Gajjar's demand was in pursuance of the meeting with Miss Jhala in her chamber on 17-8-1993. (emphasis added)

A And thus, he reached the conclusion as under:

> As a result of the above discussion, I come to the conclusion that Miss Jhala demanded or agreed to accept illegal gratification through advocate Shri C.B. Gajjar for doing favour to Shri Jani at her meeting with Shri Gajjar in her chamber on 17-8-1993. B Charge 1 is answered accordingly.

[36] The said report was accepted by the High Court and recommendation for imposing the punishment of compulsory retirement was made which was accepted by the State. C The appellant was given compulsory retirement. The High Court on Administrative side appreciated the same evidence, and came to the conclusion as under: (*Nirmala J. Jhala case*[1], Guj LR pp. 2170-72, paras. 51-53)

> D 51. ... The fact that Shri Jani and Shri Gajjar had a meeting outside the chamber of the petitioner on 17-8-1993 at about 5 o'clock in the evening and that Shri Gajjar had gone inside the chamber of the petitioner twice and demanded money on her behalf from Shri Jani to decide the case in his favour has been believed by the enquiry officer as well as by the E High Court in its recommendations. There are number of reasons why the said conclusions appear to be eminently just. At no point of time, **the petitioner has alleged any animosity or ill will between her and Shri Jani**. Neither in the cross-examination of Shri Jani nor in her deposition F before the enquiry officer, the petitioner has **even remotely suggested any ill will between them** so as to falsely implicate the petitioner.
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> 52. We have also recorded earlier that ... Shri Gajjar and Shri Jani had assembled outside the chamber of the petitioner on G 17-8-1993 and Shri Gajjar had entered the chamber of the petitioner twice when the petitioner was in her chamber demanded an amount of Rs 20,000 on behalf of the petitioner, **there is absolutely no cross-examination of Shri Jani by the petitioner. Lack of challenge to this most crucial element of the evidence fully justified the** H **findings of the competent authority** ...
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> 53. ... When this is so, it was the duty of the petitioner to explain the said circumstance. The petitioner instead of satisfactorily explaining Shri Gajjar entering her chamber twice on 17-8-1993 has completely disowned and denied any I

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[1] *Nirmala J. Jhala* v. *State of Gujarat*, (2004) 3 Guj LR 2142

> such occurrence. ... nor has the petitioner examined any witness to show that she was not in the chamber on the said day at 5 o'clock. Being court premises, surely there would have been number of witnesses readily available such as, her Bench Clerk, her stenographer, etc. who would be sitting outside her chamber, her peon and number of advocates who could vouch for the fact that the petitioner was not inside her chamber at 5 p.m. on 17-8-1993. No such attempt was made by the petitioner to examine any witness. ... the petitioner's total denial of the incident and her unwillingness or inability to explain Shri Gajjar entering her chamber on two occasions and spending considerable time inside her chamber would, in our view, be extremely damaging. Shri Gajjar's entry in her chamber on 17-8-1993 on two occasions would assume further significance in view of the fact that Shri Jani's case was earlier fixed on 13-8-1993 and thereafter adjourned to 20-8-1993 and that there was no other case of Shri Gajjar on the board before the petitioner and that, therefore, Shri Gajjar had absolutely no occasion to meet the petitioner twice inside her chamber on 17-8-1993. (emphasis added)

[37] The Division Bench of the High Court accepted the finding arrived at by the enquiry officer, though admitting that there were certain discrepancies in the evidence. The Court held as under: (*Nirmala J. Jhala case*[1], Guj LR pp. 2173-74, paras. 55 & 58)

> 55. ... We have noted that the **enquiry officer has not believed** the say of **Shri Jani** when he suggested **that he could hear the conversation between the petitioner and Shri Gajjar** when he was standing outside the chamber of the petitioner on 17-8-1993. The enquiry officer has also **discarded the possibility of the petitioner having threatened Shri Jani**. This, however, by itself would not be sufficient for us to hold that the findings of the enquiry officer and that of the High Court in its recommendations were based on no evidence. ... there was ample justification for coming to the conclusion that the charge of having demanded illegal gratification was proved against the petitioner.
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> 58. ... Shri Jani in his statement at one place had stated that his case before the petitioner was fixed on 13-8-1993, and thereafter, adjourned to 20-8-1993 and on 20-8-1993, it was

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[1] *Nirmala J. Jhala* v. *State of Gujarat*, (2004) 3 Guj LR 2142

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> again adjourned to 28-8-1993. We, therefore, to verify the dates, called for the calendar of the year 1993. The calendar of 1993 showed that August 28 was a 4th Saturday, and therefore, a non-working day for the court. ... We also find that the size of the paper on which the rozkam for the dates prior to 13-8-1993 was different from the size of preceding B and succeeding papers. Discolouration of this page also seen different from other pages, and therefore, raise suspicion. (emphasis supplied)

[38] The High Court has rightly disbelieved the statement of the C complainant-accused that he could hear the conversation between the appellant and Shri Gajjar. The said evidence was also discarded by the enquiry officer. Further allegation that the appellant had threatened the said complainant-accused to withdraw the complaint was also found to be false. The entry of D Shri C.B. Gajjar into the chamber of the appellant on 17-8-1993, was not corroborated by any other evidence. Shri C.B. Gajjar himself had also denied the same.

[39] More so, the High Court has reached the conclusion by E shifting the burden of proof of negative circumstances upon the appellant. The High Court has erred by holding that in respect of the incident dated 17-8-1993 i.e., demand of amount, it was the duty of the appellant to explain the said circumstance, and that instead of giving any satisfactory explanation in respect of entry of F Shri C.B. Gajjar, she had completely disowned and denied any such occurrence. The onus was always on the Department to prove the said circumstance. The Court should have also taken note of the fact, that the matter was adjourned for 28-8-1993, and being a 4th Saturday, it was a holiday. The Court further G committed an error by holding, that the failure to challenge the most crucial element of the evidence, regarding the incident of 17-8-1993, in respect of a demand of bribe of Rs 20,000 fully justified the findings of the enquiry officer. Again, the High Court shifted the onus to prove a negative circumstance on the H appellant.

[40] The appellant had not married at that point of time, as per her statement. Even this fact has been admitted by Shri C.B. Gajjar, Advocate. Given the above set of facts, the complainant is seen talking about the appellant's husband for collecting money on I her behalf. The High Court had failed to notice the above fact and had been making attempts to keep aside all such relevant factors in a case, where there was no direct evidence.

[41] In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.

[42] A Constitution Bench of this Court in *Amalendu Ghosh v. North Eastern Railway*[27], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and *prima facie*, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

[43] Similarly in *Champaklal Chimanlal Shah v. Union of India*[28] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held *ex parte*, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under: (AIR p. 1862, para 12)

> 12. ... There must therefore be **no confusion between the two enquiries** and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated

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[27] AIR 1960 SC 992

[28] AIR 1964 SC 1854

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> in Article 311 that the government servant is entitled to the protection of that article (, nor prior to that). (emphasis added) (See also *Govt. of India v. Tarak Nath Ghosh*[29])

[44] In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra*[30] this court dealt with the issue and held as under:

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> ... **a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet**. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the **preliminary enquiry loses its importance** and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of ***(sic)*** nor, remains of no consequence. (emphasis added)

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[45] In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

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[46] In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*[31] this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

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[47] The preliminary enquiry may be useful only to take a *prima facie* view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

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[48] "A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were (to be) believed. While

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[29] (1971) 1 SCC 734 : AIR 1971 SC 823. **Ed.**: *See* paras 10 to 14 thereof in SCC where the distinction between a preliminary and regular enquiry has been discussed. *Tarak Nath Ghosh* has however been overruled on other points in *P.R. Nayak* v. *Union of India*, (1972) 1 SCC 332 and *T.V. Nataraj* v. *State of Karnataka*, (1994) 2 SCC 32.

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[30] (1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148

[31] (2013) 4 SCC 465 : AIR 2013 SC 58

determining whether a *prima facie* case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence." (*Vide Martin Burn Ltd. v. R.N. Banerjee*[32], AIR p. 85, para. 27) (See also *Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa*[33], *V.C. Shukla v. State (Delhi Admn.)*[34], *Dalpat Kumar v. Prahlad Singh*[35] and *Cholan Roadways Ltd. v. G. Thirugnanasambandam*[36])

[49] The issue, as to whether in the instant case the material collected in preliminary enquiry could be used against the appellant, has to be considered by taking into account the facts and circumstances of the case. In the preliminary enquiry, the department placed reliance upon the statements made by the accused-complainant and Shri C.B. Gajjar, Advocate. Shri C.B. Gajjar in his statement has given the same version as he has deposed in regular enquiry. Shri Gajjar did not utter a single word about the meeting with the appellant on 17-8-1993, as he had stated that he had asked the accused-complainant to pay Rs 20,000 as was agreed with by Shri P.K. Pancholi, Advocate. Of course, Shri C.B. Gajjar, complainant, has definitely reiterated the stand he had taken in his complaint. The charge-sheet served upon the appellant contained 12 charges. Only the first charge related to the incident dated 17-8-1993 was in respect of the case of the complainant. The other charges related to various other civil and criminal cases. The same were for not deciding the application for interim reliefs, etc.

[50] The charge-sheet was accompanied by the statement of imputation, list of witnesses and the list of documents. However, it did not say that so far as Charge 1 was concerned, the preliminary enquiry report or the evidence collected therein, would be used/relied upon against the appellant.

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32. AIR 1958 SC 79
33. AIR 1960 SC 1352
34. 1980 Supp SCC 249 : 1980 SCC (Cri) 849 : AIR 1980 SC 1382
35. (1992) 1 SCC 719 : AIR 1993 SC 276
36. (2005) 3 SCC 241 : 2005 SCC (L&S) 395 : AIR 2005 SC 570

A **[51]** There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant-accused or Shri C.B. Gajjar, Advocate, had been exhibited in regular inquiry. In the absence of information in the charge-sheet that such report/statements would B be relied upon against the appellant, it was not permissible for the enquiry officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order C passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (*Vide S.L. Kapoor v. Jagmohan*[37], *D.K. Yadav v. J.M.A. Industries Ltd.*[38] and *Mohd. Yunus Khan v. State of U.P.*[39])

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[52] In view of the above, we reach the following inescapable conclusions:

[52.1] The High Court failed to appreciate that the appellant had not granted long adjournments to the accused-complainant as the E appellant wanted to conclude the trial at the earliest. The case of the accused-complainant which was taking its time, had suddenly gathered pace, thus, he would have naturally felt aggrieved by failing to notice it. The High Court erred in recording a finding that the complainant had no ill will or motive to make any F allegation against the appellant.

[52.2] The enquiry officer, the High Court on administrative side as well as on judicial side, committed a grave error in placing reliance on the statement of the complainant as well as of Shri G C.B. Gajjar, Advocate, recorded in a preliminary enquiry. The preliminary enquiry and its report loses significance/importance, once the regular enquiry is initiated by issuing charge-sheet to the delinquent. Thus, it was all in violation of the principles of natural justice.

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[52.3] The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was the delinquent in the enquiry.

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[37] (1980) 4 SCC 379 : AIR 1981 SC 136

[38] (1993) 3 SCC 259 : 1993 SCC (L&S) 723

[39] (2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180

[52.4] The onus lies on the department to prove the charge and it failed to examine any of the employees of the court i.e. stenographer, Bench Secretary or peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17-8-1993. A

[52.5] The complainant has been disbelieved by the enquiry officer as well as the High Court on various issues, particularly on the point of his personal hearing, the conversation between the appellant and Shri C.B. Gajjar, Advocate on 17-8-1993, when they met in the chamber. B C

[52.6] Similarly, the allegation of the complainant, that the appellant had threatened him through his wife, forcing him to withdraw the complaint against her, has been disbelieved.

[52.7] The complainant as well as Shri C.B. Gajjar, Advocate had been talking about the appellant's husband having collecting the amount on behalf of the appellant, for deciding the cases, though at that point of time, she was unmarried. D

[52.8] There is nothing on record to show that the appellant whose defence has been disbelieved *in toto*, had ever been given any adverse entry in her ACRs, or punished earlier in any enquiry. While she has been punished solely on uncorroborated statement of an accused facing trial for misappropriation. E

[53] In view of the above, we have no option except to allow the appeal. The appeal succeeds and is accordingly allowed. The order of punishment imposed by the High Court in compulsorily retiring the appellant is set aside. However, as the appellant has already reached the age of superannuation long ago, it is not desirable under the facts and circumstances of the case, to grant her any substantive relief, except to exonerate her honourably of all the charges, and allow the appeal with costs, which is quantified to the tune of Rs 5 lakhs. The State of Gujarat is directed to pay the said costs to the appellant within a period of 3 months from today. F G H

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